Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ROLAND L. GOAD,

Petitioner,

v.

JAY F. WILLIAMS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROLAND L. GOAD, Petitioner
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Huntsville, Texas 77340
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(pro se)

21 March 1994

47 pp

QUESTION PRESENTED

Is it permissible for a federal court to require a fee-paying plaintiff to obtain prior consent of a federal judge before submitting his legal papers to the clerk of court?

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IN THE

SUPREME COURT OF THE UNITED STATES

NO.

ROLAND L. GOAD, Petitioner, [1]

versus

JAY F. WILLIAMS, Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Roland L. Goad, the plaintiff and appellant in the proceedings below, petitions for a writ of certiorari to review the

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1. The names of all parties appear in the caption above. Petitioner's unopposed motion to substitute a party was granted by the Fifth Circuit on 16 November 1993. JAY F. WILLIAMS was substituted for CLYDE E. JEFFCOAT.

judgment of the United States Court of Appeals for the Fifth Circuit in this case. [Pet.App. 1a]. [2]

CITATION TO OPINIONS BELOW

This civil action was brought in the United States District Court for the Southern District of Texas against a federal disbursing officer challenging his authority to garnish Petitioner military retired pay. The action was dismissed because no federal judge had authorized Petitioner to file the action and therefore the clerk should not have accepted the filing of Petitioner's complaint. [Pet.App. 8a]. Alternatively, the complaint was dismissed because Petitioner had not shown that a fine imposed in Goad v. United States, 661 F.Supp. 1073 (S.D.Tex. 1987), vacated in part and remanded, 837 F.2d 1096 (CAFC

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2. Refers to the appendix to this petition.

1987) (table), cert. denied, 485 U.S. 906 (1988) had been paid. [Pet.App. 9a].

Petitioner's timely appeal in the United States Court of Appeals for the Fifth Circuit was dismissed because there was no indication in the record that Petitioner was authorized to file his action in the district court, or to take his appeal to the Fifth Circuit. The appeal was dismissed for the reason that it was "improvidently docketed." [Pet. App. 3a]. Petitioner's motion for rehearing was denied on 21 February 1994. [Pet.App. 10a].

JURISDICTION IN THIS COURT

On January 7, 1994 the United States Court of Appeals for the Fifth Circuit dismissed the appeal in this case. [Pet. App. 1a]. Motion for rehearing was denied on February 21, 1994. [Pet.App. 10a]. This petition for writ of certiorari will

be filed with the clerk before the expiration of 90 days from 21 February 1994. This Court's jurisdiction to consider this petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit is invoked pursuant to the provisions of Section 1254(1) of Title 28, United States Code.

JURISDICTION IN THE DISTRICT COURT

Subject-matter jurisdiction over Petitioner's civil action against a federal disbursing official was invoked under the provision of several federal statutes. [R-0017], 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. 1337(a) (Act Regulating Commerce), 28 U.S.C. § 1361 (Mandamus), 28 U.S.C. §§ 2201(a) & 2202 (Declaratory Judgment) Specific relief was sought under the Administrative Procedures Act (APA) (5 U.S.C. §§ 701-706).

JURISDICTION IN THE COURT OF APPEALS

This was an appeal from the final judgment of a district court in a civil case and jurisdiction in the court of appeals was invoked under Section 1291 of Title 28, United States Code.

THE CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED IN THIS CASE

U. S. Constitution, Art. I, § 9, Cl. 7.

> No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

U. S. Constitution, Art. III, § 2, Cl. 1.

> The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;— to Controversies to which the United States shall be a party;—to Controversies between two or more States;— between a State and Citizens of another State;—between Citizens of different

States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U. S. Constitution, Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Constitution, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

10 U.S.C. § 1463(a)(1)

There shall be paid from the DoD Military Retirement Fund retired pay payable to members on the retired lists of the Army, Navy, Air Force and Marine Corps.

28 U.S.C. § 454

Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

28 U.S.C. § 956

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1331

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1337(a)

> The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce ...

28 U.S.C. § 2106

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

31 U.S.C. § 3321(a)(2)

> A disbursing official shall draw public money from the Treasury or a depository only as necessary to make payments; and payable to persons to which payment is to be made.

FED. R. APP. P. 45(a)

> ... The court of appeals shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. ...

FED. R. APP. P. 45(b)

> ... The clerk shall enter a record of all papers filed with the clerk and all process, orders and judgments. ...

FED. R. CIV. P. 7(b)(1)

> An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Code of Judicial Conduct, Canon 3(A)(5)

> A judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other private communications concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to his or her direction or control. ...

STATEMENT OF THE CASE

The Parties

Petitioner "is a member of the United States Air Force on the retired list. Mr. Goad remains entitled to earn pay based on his continuing military status and his availability for immediate recall if the Secretary of the Air Force deems it to be necessary." [3]

Respondent is an officer of the United States and is the Director of the Cleveland Office of the Defense Finance and Accounting Service (DFAS), duly appointed, qualified, and acting as such Director of the Cleveland Office, is responsible for the disbursement of the pay which is the subject of this litigation.

No aspect of this case and no issue in

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3. Goad v. United States, 24 Cl.Ct. 777, 778 (1991), aff'd, 976 F.2d 747 (CAFC) (table), cert. denied, 113 S.Ct. 814 (1992).

this case involves Mary Beth Goad. No claim either for or against her would be cognizable in this action. This accords with the canon that a congressional grant of jurisdiction should be read narrowly [4] and that "a grant of jurisdiction over claims involving particular parties does not itself confer jurisdiction over additional claims or against different parties." [5]

The Basis For Federal Jurisdiction in the District Court

In order to secure regularity, punctuality, and fidelity in the disbursement and control of the public treasure, the Framers have provided that

> "No money shall be drawn from the treasury but in consequence of appropriations made by law."

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4. Healy v. Ratta, 292 U.S. 263, 270 (1934).

5. Finley v. United States, 490 U.S. 544, 556 (1989).

U. S. CONSTITUTION, Art. I, § 9, cl. 7.

Because funds in the United States Treasury may be expended only for the object for which they have been appropriated, Congress has provided that

> "A disbursing official shall draw public money from the Treasury or a depository only as necessary to make payments; and payable to persons to which payment is to be made."

31 U.S.C. § 3321(a)(2).

A permanent appropriation has been established that provides for the disbursement of Petitioner's military pay. It provides that

> "There shall be paid from the DoD Military Retirement Fund retired pay payable to members on the retired lists of the Army, Navy, Air Force and Marine Corps."

10 U.S.C. § 1463(a)(1).

The statute does not contemplate that payments may be made to anyone who is not a retired member of the armed forces.

The Legal Issue in the District Court

The only legal issue presented to the District Court was: Can Mr. Williams, a disbursing agent of the United States, be permitted to make deductions from Goad's disposable retired pay solely on the basis of an ex parte request from Goad's former spouse that has not been joined with, or accompanied by, any order, writ, mandate, or other legal process in the nature of execution or garnishment, directed to either Mr. Williams or the public money under his control? [R-0266, 0258, 0238, 0214, 0149 & 005].

No issue in this case involves any rights of Mary Beth Goad, Petitioner's former spouse.

Judicial Action in the District Court

The initial scheduling conference was cancelled without explanation and the District Court, without notice or hearing, sua sponte dismissed the complaint stating:

> This action directly concerns plaintiff's Air Force retirement benefits, and this court has not authorized its filing. Nor has plaintiff shown that any other court authorized its filing. Accordingly, the clerk of this court should not have accepted the filing of plaintiff's complaint, and pursuant to the order of the Fifth Circuit, this action is **DISMISSED**.

Pet.App. 7a-8a [R-0269-0268].

Judicial Action in the Court of Appeals

Petitioner's timely appeal in the United States Court of Appeals for the Fifth Circuit was dismissed because

> There is no indication in the record that Goad was authorized to file his action in the district court, or take his appeal before this Court. For that reason Goad's appeal is dismissed as improvidently docketed.
>
> For ignoring the previous orders of the Court requiring him to obtain permission of a judge before filing, Goad

> is sanctioned in the amount of $200 payable to the Clerk of the Court for the Southern District of Texas at Houston for deposit with the United States Treasury. Clerks of Court are reminded that they are not to accept any further filings by Goad without consent of a judge and payment of this sanction.
>
> APPEAL DISMISSED.

Pet. App. 3a.

A timely motion for rehearing was denied on February 21, 1994. [Pet.App. 10a] The appeal was DISMISSED because it was "improvidently [6] docketed." [Pet. App. 3a].

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6. "Improvidently" is defined as meaning "not provident, wanting foresight or forethought; not foreseeing or providing for the future; negligent, thoughtless; thriftless." City of Burlington, Vermont v. Westinghouse Electric Corp., 246 F.Supp. 839, 842 (D.D.C. 1965). A judgment, decree, rule or injunction is improvidently granted when rendered "without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice." Blacks Law Dictionary 758 (6th Ed. (1990).

REASONS FOR ALLOWANCE OF THE WRIT

1

"A clerk of a district court of the United States is the court's principal administrative officer." [7] "The court of appeals shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders." [8] "The clerk shall enter a record of all papers filed with the clerk and all process, orders and judgments." [9] It is the official duty of the clerk of the court to file all papers in a cause presented by the parties, and mark them "Filed," with the date of filing. [10]

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7. United States v. Monjar, 154 F.2d 954, 958 (CA3 1946).

8. FED. R. APP. P. 45(a).

9. FED. R. APP. P. 45(b).

10. Burns v. Ohio, 360 U.S. 252, 256 (1959).

"The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court." [11] However, a clerk can't be summarily compelled, by a court other than the one of which he is a clerk, to do a certain act; nor is he obliged to perform acts not falling within the scope of his official duties. [12] Also, parties litigant have the right to file such motions and papers as they see fit, for the purpose of perfecting their record and preserving their rights. [13]

No procedure, practice, injunction, or some imagined inherent power may be employed to prevent the clerk from performing his ministerial duties.

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11. 28 U.S.C. § 956.

12. Coe v. Champlain Graphite Co., 154 A.D. 518, 139 N.Y.S. 329, 330 (1913).

13. Cooney v. Isaaks, 173 S.W. 901, 903 (Tex.Civ.App.-1915, no writ).

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One may communicate with a federal judge only by a written motion filed with the clerk. [14] A judge may not consider ex parte communications. [15] And any "justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor." [16] The pre-examination of a litigant's papers before submission to the clerk has all the attributes of engaging in the practice of law; therefore, no federal judge should be permitted to commit a "high misdemeanor" in this way. Certainly, no citizen should be made to be an accessory before the fact for such unlawful behavior of a federal judge.

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14. FED. R. CIV. P. 7(b)(1).

15. CODE OF JUDICIAL CONDUCT, Canon 3A(5).

16. 28 U.S.C. § 454.

3

If a legitimate method were found to allow a litigant to submit his papers to a federal judge before filing them, it would violate the Constitution. "The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy," and "a federal court [lacks] the power to render advisory opinions." [17] The case-or-controversy requirements of Article III precludes a federal judge from deciding "abstract, hypothetical or contingent questions." [18] The purpose of this case-or-controversy requirement is to "limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process." [19]

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17. U.S. Nat. Bank v. Ind. Ins. Agents, 113 S.Ct. 2173, 2178 (1993).

18. Muskrat v. United States, 219 U.S. 346, 362 (1911).

19. Flast v. Cohen, 392 U.S. 83, 95 (1968).

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Petitioner's appeal was dismissed by the Fifth Circuit as punishment for not submitting papers to a federal judge before filing them with the clerk. This action is in clear violation of a long line of precedent. Where a complaint had been dismissed for failure to comply with a court's order, this Court read the "property" component of the Fifth Amendment's Due Process Clause to impose "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." [20] By a long line of cases following Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 545-49 (1902), it is settled that illegality constitutes no defense when merely collateral to the cause of action sued on. A "person does

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20. Societe Internationale v. Rogers, 357 U.S. 197, 209 (1958).

not become an outlaw and lose all rights by doing an illegal act." [21] Courts grant relief against present wrongs and to enforce existing rights. [22] "Equity does not demand that its suitors shall have led blameless lives." [23] And "fair procedures are not confined to the innocent." [24]

"Equity is no longer granted or withheld according to the chancellor's sensibilities ... and even the wicked have a right to treatment according to the rules." [25]

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21. National Bank & Loan Co. v. Petrie, 189 U.S. 423, 425 (1903).

22. Brooks v. Martin, 2 Wall. (69 U.S.) 70, 79 (1864); Planters' Bank v. Union Bank, 16 Wall. (83 U.S.) 483, 499 (1873); Loughran v. Loughran, 292 U.S. 216, 229 (1934).

23. Standard Oil v. Clark, 163 F.2d 917, 927 (CA2 1947).

24. United States v. James Daniel Good Real Property, 114 S.Ct. 492, 505 (1993).

25. Const. Indust. Ret. Fund v. Kasper Trucking Inc., 10 F.3d 465, 468-469 (CA7 1993).

"The mere fact that plaintiff is litigious is not an adequate basis from which to conclude that all his actions are meritless." [26] "If rules of procedure work as they should in an honest and fair judicial system, they not only permit, but should as nearly as possible guarantee that bona fide complaints be carried to adjudication on the merits." [27] "Arbitrary power and the rule of the Constitution cannot both exist. They are antagonistic and incompatible forces; and one or the other must of necessity perish whenever they are brought in conflict." [28]

To say that courts have inherent power to deny all right to defend an action, and to

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26. Klein v. Adams & Peck, 430 F.2d 337, 339 (CA2 1971).

27. Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 373 (1966).

28. Jones v. Securities & Exchange Comm'n, 298 U.S. 1, 24-25 (1936).

render decrees without any hearing whatever, is, in the very nature of things, to convert the court exercising such authority into an instrument of wrong and oppression, and hence strip it of that attribute of justice upon which the exercise of judicial power necessarily depends. [29]

The federal courts have no more rights to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. [30]

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The appeal was dismissed. [Pet.App. 3a] On dismissal the whole case is out of court, and the appellate court cannot in any manner pass on the merits of the action or determine

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29. Hovey v. Elliott, 167 U.S. 409, 414 (1897).

30. Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404 (1821) (Marshall, C.J.).

questions raised by the briefs concerning the merits; and the appellate court cannot act with respect to the judgment of the lower court or direct its action. [31]

Besides dismissing the appeal, the Fifth Circuit fined Petitioner $200 and ordered all clerks of court to refuse to accept any more papers from the Petitioner until the fine was paid. [Pet.App. 3a]. The Fifth Circuit completely ignored its own rule established en banc where it was decided that the imposition of monetary sanctions must not result in total or even significant preclusion of access to the courts. [32]

This right of access to the courts is

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31. 36 C.J.S. Federal Courts § 296(22) at 1083 (1960); 5 C.J.S. Appeal & Error §§ 653 & 655 (1993).

32. Thomas v. Capital Security Serv., Inc., 836 F.2d 866, 882-883 n.23 (CA5 1988) (en banc).

protected by the First Amendment [33] and is among the most precious of liberties. [34]

The strong presumption of the courts' open access to all parties cuts against the imposition of sanctions for invoking the legal process. [35]

Those who, under our political compact, have the privilege and authority to govern must do so fairly and reasonably with respect to the rights guaranteed to all citizens under the constitution. The burden thus imposed on those in authority is not unreasonable if the individuals by whose authority

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33. California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972).

34. United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967).

35. Talamini v. Allstate Ins. Co., 470 U.S. 1067, 1070 (1985) (Stevens, J., concurring).

and for whose benefit they act, are to enjoy those benefits of freedom and democracy to which they are entitled, rather than to suffer the abuses of a police state.

6

Petitioner's former spouse is not a party to these proceedings and no claim for or against her is cognizable in this action. The Fifth Circuit has ignored the immutable rule that a judgment may only be properly given for something raised in the course of a litigation between parties. [36] "A judgment, to be conclusive upon the parties to the litigation, must be responsive to the matters controverted." [37]

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36. Georgia S. & F. Ry. v. Einstein, 218 Fed. 55, 60 (CA5 1914), cert. denied, 239 U.S. 643 (1915); Reynolds v. Stockton, 140 U.S. 254, 266, 270 (1891).

37. Reynolds v. Stockton, 140 U.S. 254, 258 (1891); Hovey v. Elliott, 167 U.S. 409, 445-446 (1897).

"A decree must relate specifically and exclusively to the pleadings and proof." [38] A court "cannot enter a judgment which is beyond the claim asserted, or which, in its essential character, is not responsive to the cause which the pleading was based." [39] And a judgment should not contain findings which are not conclusive between the parties, and no findings will be conclusive unless it is necessary to the disposition of the issues." [40] "A judgment upon a matter outside the issue must, of necessity, be altogether arbitrary and unjust, as it concludes a point upon which

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38. United Transportation Union v. State, Bar of Michigan, 401 U.S. 576, 581 (1971).

39. Standard Oil v. Missouri, 224 U.S. 270, 281 (1912).

40. Radford v. Myers, 231 U.S. 725, 733 (1914).

the parties have not been heard." [41]

7

When a case is properly brought before a federal appellate court, dismissal of the appeal is not a permissible option. If the record does not present any question of law for the revision of the appellate court, the judgment below must be affirmed, but the cause cannot be dismissed. [42] The court of appeals "may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review." [43] Dismissal is not one of the prescribed options. The maxim expressio unius est exclusio alterius applies. The mention of one thing implies exclusion of all others.

41. Clark v. Arizona Mut. Savings & Loan Ass'n, 217 Fed. 640, 642 (D. Ariz. 1914), aff'd, 220 Fed. 1 (CA9 1915).

42. The Eutaw, 12 Wall. (79 U.S.) 136, 141 (1871).

43. 28 U.S.C. § 2106.

CONCLUSION

Supreme Court Rule 10.1(a) permits this Court to exercise its discretion to grant a writ of certiorari when a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for the exercise of this Court's power of supervision. And Rule 16.1 allows for summary disposition on the merits.

This case presents a perfect example for this Court's exercise of its discretionary power. For this Petitioner, his rights under the Constitution are of paramount concern. However, this case goes far beyond any such personal rights. The integrity and the validity of the judicial processes in the Judicial Department of the United States Government is at stake.

If the pleadings were ever examined

by the courts below, that fact is not evident in the record, consequently, calling up the record would serve no useful purpose. The appendix to this petition contains all the documentation needed to dispose of the issue presented for review.

Petitioner respectfully urges this Court to grant the writ of certiorari and remand the case to the Fifth Circuit with instructions to restore the case to the appellate docket of that court and address the appeal according to accepted practices in our federal system.

Respectfully submitted.

21 March 1994

ROLAND L. GOAD
310 Sara Lane
Huntsville, Texas
77340-6764
(409) 291-2430
Petitioner (pro se)

Opinion of the United States Court of Appeals for the Fifth Circuit, filed on 7 January 1994 ordering the appeal dismissed because it was "improvidently docketed."

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2548
Summary Calendar

ROLAND L. GOAD,

Plaintiff-Appellant,

versus

JAY F. WILLIAMS,

Defendant-Appellee.

Before DUHÉ, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM: *

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Roland Lee Goad filed a complaint against the Director of the Defense Finance and Accounting Service in Denver, Colorado, alleging that the Director violated his state and federal constitutional rights, his state statutory rights, the Consumer Protection Act and the Uniformed Services Former Spouses' Protection Act by paying part of his Air Force retirement benefits to his former wife.

In 1991 this Court ordered "all clerks of court under the jurisdiction of this court to refuse to accept any further filings from . . . Goad which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife unless a judge of this court, or a judge of the forum district, first specifically authorizes the filing." Goad v. Rollins, 921 F.2d 69, 71 (5th Cir.), cert. denied, 111 S.Ct. 1684 (1991).

There is no indication in the record that Goad was authorized to file his action in the district court, or take his appeal before this Court. For that reason Goad's appeal is dismissed as improvidently docketed.

For ignoring the previous orders of the Court requiring him to obtain permission of a judge before filing, Goad is sanctioned in the amount of $200 payable to the Clerk of the Court for the United States District Court for the Southern District of Texas at Houston for deposit with the United States Treasury. Clerks of Court are reminded that they are not to accept any further filings by Goad without consent of a judge and payment of this sanction.

APPEAL DISMISSED.

Final judgment entered in the district court on 15 July 1993. [R-0271]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND L. GOAD, Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-93-0367
CLYDE E. JEFFCOAT, Director, Denver Center Defense Finance and Accounting Service, Defendant.	§	

FINAL JUDGMENT

In accordance with the Court's Memorandum and Order granting defendant's Motion to Dismiss, this action is **DISMISSED** with prejudice.

This is a **FINAL JUDGMENT.**

SIGNED at Houston, Texas, this 14th day of July, 1993.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

Memorandum and Order entered in the District Court on 15 July 1993. [R-0268-0270]

[R-0270]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND L. GOAD, Plaintiff,	§	
v.	§	CIVIL ACTION no. H-93-0367
CLYDE E. JEFFCOAT, Director, Denver Center Defense Finance and Accounting Service, Defendant.	§	

MEMORANDUM AND ORDER

Pending before the court is the Motion of the United States of America on behalf of defendant, the Director of the Defense Finance and Accounting Service, to Dismiss this action pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure and because of plaintiff's failure to pay sanctions imposed by the court in other related litigation (Docket Entry No. 6). Plaintiff, Roland L. Goad, opposes the motion, arguing that this

action is distinct from his previous litigation and that the sanctions imposed by the court during previous litigation were part of a vacated opinion.

Plaintiff filed this action against Jeffcoat, as director of the Defense Finance and Accounting Service, based on Jeffcoat's disbursal of a portion of plaintiff's retirement pay to Mary Beth Goad, the former wife of plaintiff. According to

[R-0269]

plaintiff such disbursal violates the Consumer Credit Protection Act, 15 U.S.C. § 1671-1677, his constitutional rights, and his rights under state law and exceeds the defendant's authority pursuant to the Uniformed Services Former Spouses' Protection Act (USFSPA). Mary Beth Goad is not a party to this action.

Plaintiff has a long history of filing lawsuits relating to his retirement pay, and

this is at least his seventh such action. See Goad v. Rollins, 921 F.2d 69, 70 (5th Cir.), cert. denied, 111 S.Ct. 1684 (1991) (noting at that time plaintiff had filed six lawsuits in federal and state courts relating to his military benefits). In Goad v. Rollins the Fifth Circuit held that plaintiff's appeal in that case was "patently frivolous" and remanded the case to this court for the imposition of monetary sanctions against plaintiff. Id. at 71. The Fifth Circuit "further direct[ed] all clerks of court under the jurisdiction of this court to refuse to accept any further filings from Roland Lee Goad which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife unless a judge of this court, or a judge of the forum district, first specifically authorizes the filing." Id.

This action directly concerns plaintiff's Air Force retirement benefits, and this court

has not authorized its filing. Nor has plaintiff shown that any other court authorized its filing. Accordingly, the clerk of this court should not have accepted the filing of plaintiff's complaint, and pursuant to the order of the Fifth Circuit, this action is **DISMISSED**. As

[R-0268]

the Fifth Circuit aptly observed, "Goad's campaign to prevent his former wife from receiving what is rightfully hers, which succeeds only in wasting scarce judicial resources and harassing innocent citizens, must cease." 921 F.2d at 71.

Alternatively, this action is **DISMISSED** because plaintiff has not paid the sanctions due in Goad v. United States, 661 F.Supp. 1073 (1987), aff'd in part and vacated in part. 837 F.2d 1096 (Fed. Cir.), cert. denied, 108 S.Ct. 1079 (1988). Goad does not

contend that he has paid the sanctions ordered by Judge Hittner, Judge Hittner's sanctions order is not "void" and was specifically affirmed by the Federal Circuit. See Goad v. Rollins, 921 F.2d at 71, citing Goad v. United States, 837 F.2d at 1096.

The Clerk is directed to refuse to accept any further filings from Roland Lee Goad which in any way involve the payment of a portion of his Air Force retirement pay to his former wife unless authorized by a judge of the United States Court of Appeals for the Fifth Circuit or a judge of this district.

SIGNED at Houston, Texas, this 14th day of July, 1993.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

Order of the United States Court of Appeals for the Fifth Circuit filed on 21 February 1994 denying motion for rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2548
USDC No. CA-H-93-0367

ROLAND L. GOAD,

Plaintiff-Appellant,

versus

JAY F. WILLIAMS,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Texas

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Before DUHÉ, GARZA, and DeMOSS, Circuit Judges.

BY THE COURT:

IT IS ORDERED the Roland L. Goad's motion for reconsideration is DENIED.